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SUBJECT: IN BELARUS THE JUDICIARY IS JUST ONE MORE TOOL OF CONTROL
FOR THE PRESIDENTIAL ADMINISTRATION

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1. (SBU) Summary. Two of the Belarusian Helsinki Committee's (BHC) most prominent human rights leaders, Harry Pogonyailo and Oleg Gulak, told Post that the Belarusian judicial system remains under the control of the Presidential Administration (PA) and the Justice Ministry (MOJ). According to them, judges trade their professional independence for lucrative governmental benefits and follow precise instructions set by the PA, while defense lawyers are pressured through the Belarusian Bar Association. Additionally, the PA imposes certain indicators on the judiciary by which it further restrains the independence of the courts. Although the PA faces some internal opposition over its control of the judiciary from agencies like the MFA, the latter's dissenting voices are rather insignificant. Subsequently, the lack of a real independent judiciary allows the PA to continue influencing judges, persecuting the opposition, and deepening the PA's concentration of power. End summary.

Judiciary: Lack of Sovereignty and Resuscitated Soviet Practices

2. (SBU) According to Gulak and Pogonyailo, the Belarusian court system continues to be heavily dependent on the regime's executive branch. In particular, the courts rely on the MOJ for budgetary allocations, while the PA controls the recruitment and appointment of judges. Additionally, the PA consistently adheres to the Soviet-style practice of nominating judges. The experts explained that this process requires extensive background checks by the Belarusian State Security Committee (BKGB) and approval from local executive committees in order to guarantee the ideology pedigree of the nominees. Senior level judicial candidates are also subject to yet another layer of scrutiny and are personally interviewed by the PA's Deputy Head.

3. (SBU) Moreover, the lucrative governmental benefits, including free housing that the judges enjoy for towing the line and the MOJ's loyalty-based promotion system for "trustworthy" judges who deliver desirable trial outcomes, add to their reluctance to depart from the "traditional" approaches in handling political and other cases and to pursue non-sponsored judgments. Also, the judges are not authorized to take foreign business travel and participation in seminars and conferences without special permission from their courts' chairs. Nevertheless, it was noted that loyalty to the regime does not secure immunity from repressions and persecution, and even the most "loyal" judges may be brought up on far-fetched charges that the courts once applied against the regime's opponents.

Quantitative Targets Predetermine the Work of the Courts

14. (SBU) The pundits elaborated that the PA further controls the courts by requiring the judiciary to implement a range of the indicators that the PA uses to evaluate the efficiency of the system. Ostensibly, a high number of "indictments" and a low "rate" of acquittals (less than 1%, which was common for the Soviet judicial system) demonstrate the "success" of the judicial system's performance in the eyes of the PA bureaucrats. According to Pogonyailo and Gulak, the PA apparatchiks regard laws as their exclusive domain and continue to be the ultimate source of "legislative initiatives."

Bar Association: No Support to Lawyers

15. (SBU) According to the interlocutors, the Belarus National Bar Association is controlled to a great extent by the MOJ. As in the case with the judges, lawyers must also receive approvals to participate in conferences or seminars in and outside of Belarus. Moreover, the Bar can repeal a lawyer's license for minor misconduct, and the MOJ is required to endorse the appointment of the Bar's chief. As a result, independent lawyers regretfully acknowledge that "being a lawyer" is no longer "prestigious" in a judicial system that is "in the pocket" of the regime. The ongoing criminal cases against Volkovysk political activists Nikolay Avtukhovich and Yuriy Leonov, charged with arson and terrorism, vividly demonstrate how even the "most progressive" and open-minded lawyers can be constrained by the law-enforcement. The lawyers in this case have been unable to effectively defend their clients because they are prohibited from disclosing any details about the investigation. Consequently, these lawyers have no right to publicly express their concerns about any violations that may occur during the investigation that infringe upon the activists' legal rights or even any inappropriate treatment in the pretrial holding facilities. In the end, the judicial system ultimately puts the lawyers at risk of persecution and the regime's

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arbitrary rule if they confront the prosecution's case or even approach to the case.

PA and MFA Send Mixed Messages

16. (SBU) Gulak stressed that despite the PA's immense authority over all GOB agencies, the MFA officials have attempted to push for a different approach, especially with regard to politically motivated trials. In their informal conversations with the BHC, the MFA EUR officers explained that the cases involving internationally recognized political prisoners were a sour point in the Belarus' relations with the West. In case of Artyom Dubskiy (sentenced on July 7, 2009, to a year in jail for violating his previous sentence to a two-year partial house arrest), the MFA officers lobbied for Dubskiy's early release. Despite these efforts, the PA international affairs aides legitimized Dubskiy's sentence and expressed confidence prior to his trial that Amnesty International would not recognize Dubskiy as "a prisoner of conscience."

Comment

17. (SBU) As with all other aspects of governance, and in the case of Belarus that includes 80% of the economy that lies in state hands, the PA maintains authority over the judicial system to ensure that it serves as yet one more of its instruments of control over society. This applies not only to political dissidents or opposition figures but to intransigent business managers and state officials as well. The courts' dependence on the regime and the subsequent lack of independent and consistent judicial processes, including the possibility of impartial appeal procedures, have led to a vicious circle, which fully cements the PA's concentration of power over the courts. End comment.
SCANLAN